

CLIENT ADVISORY

Asset Discovery Is a Valuable Skill for Creditors.

**Hint: Start with the “Fruit Closest to the Ground”—
Information You Already Have in Your Files.**

Pittsburgh, PA (September 2005)—Sometimes, winning a case is just the beginning. Consider this scenario:

You have just “won” your case. You have a money judgment, a determination by the court that the debtor owes you a specified amount. Even after the debtor receives notice of the judgment—basically, an order to pay up—there’s a good chance that the debtor will not comply.

Now you must locate assets of the judgment debtor that can be involuntarily liquidated to satisfy your judgment. This can be the most difficult part of your pursuit of the debtor: transforming that piece of paper that says “judgment” into paper that says “federal reserve note”! Where do you start?

- 1) Begin with what you already know about the debtor (called informal discovery). Look on his credit application as it may list a bank and perhaps even an account number. Even if that information is not listed, the application may also list credit references that the debtor felt comfortable providing at the time he applied for credit. This information is valuable to you in two respects: a) these other suppliers may have access to his bank account information on checks they have received, or b) if they are not being paid, either, they will probably be more than happy to share with you what they know about the debtor’s assets.
- 2) If the underlying transaction giving rise to the judgment involved a lease/finance or loan transaction, look for a financial statement for the debtor in the creditor’s records. A financial statement can be a “gold mine”—it usually lists real estate, machinery and equipment, inventory, vehicles, and bank accounts. Even if the underlying transaction was a consumer/retail transaction that required that the debtor provide a financial statement, that document may reveal other attachable assets like real estate, vehicles, bank accounts, certificates of deposit, and securities. (Just be aware that it’s possible that these are actually “illusory assets”—assets that the debtor has previously disclosed in a credit application or financial statement, but which may be subject to prior liens or encumbrances, or may pose other problems with regard to attachability.)
- 3) Check public records—even if you have a credit application or financial statement. Whether the judgment debtor is a corporation or business partnership or an individual consumer, this will provide the debtor’s address. If the judgment debtor is a business, it will reveal the nature of the business. You can perform searches of the following public offices’ websites: The County Tax Assessor’s Office, Court Clerk’s Office, and your State Commonwealth/Corporations Bureau.

Of course, in these situations—as in most—the “ounce of prevention” rule holds. At Bernstein Law Firm we teach our clients to take the time to get the right documentation BEFORE they approve a loan or credit—that way, they find that they have a lot of information to work with in discovering assets if the account goes bad.

The bottom line? Making sure your credit applications/credit agreements are current and you get all the information you need before there is “trouble” will save you a lot of legwork searching for assets in the end.

Don't miss our upcoming teleseminar: Credit Concerns for Growing Businesses

Because many of our clients are experiencing tremendous growth, Bernstein Law Firm is offering a teleseminar designed especially for them. “Credit Concerns for Growing Businesses” will be held Tuesday, September 27, at 2:00 p.m. eastern. Visit www.bernsteinlaw.com to sign up.

We also are experiencing tremendous growth!

We welcome three new attorneys:

Peter J. Ashcroft:

Peter is an associate concentrating in bankruptcy and creditors' rights. Prior to joining the Bernstein Law Firm, he was a partner in a boutique litigation firm specializing in commercial litigation, bankruptcy and employment law.

Heidi A. Kordish:

Heidi is an associate concentrating primarily in real estate and mortgage foreclosure. She is a graduate of the University of Pittsburgh at Johnstown and the Thomas M. Cooley Law School.

Sherry Magretti Hamilton:

Sherry is an associate concentrating in bankruptcy and creditors' rights. Prior to joining the Bernstein Law Firm, she was an associate with a general practice law firm in Greensburg, PA, and was a research assistant to the late Professor/Dean W. Edward Sell at the University of Pittsburgh School of Law.

Bernstein Law Firm, P.C. is a full service creditors' rights and bankruptcy law firm, providing a comprehensive range of services in all aspects of creditor and bankruptcy representation.
